

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

RODNEY CLAYTON ALSTON, )  
                                )  
                                )  
**Petitioner,**              )  
                                )  
                                )  
v.                             )                           **1:05CV00333**  
                                )  
                                )  
**UNITED STATES OF AMERICA,** )                           **1:01CR193-1**  
                                )  
                                )  
**Respondent.**             )

**O-R-D-E-R**

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on April 19, 2005, was served on the parties in this action. Petitioner objected to the Recommendation.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

**IT IS THEREFORE ORDERED** that Petitioner's pleading seeking relief from a criminal judgment pursuant to Federal Rules of Civil Procedure, Rule 60(b) [Pleading No. 1] be construed as an attempt by Petitioner to file a motion to vacate, set aside or correct sentence, and that the motion to vacate be dismissed without prejudice to Petitioner filing a

new action on the proper forms. A judgment dismissing this action will be entered contemporaneously with this Order.

This the day of October 27, 2005

/s/ N. Carlton Tilley, Jr.  
United States District Judge